

DOCUMENT RESUME

ED 433 157

RC 020 433

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TITLE Speaking for Our Children: A Look at the Guardian ad Litem Program.
PUB DATE 1994-11-14
NOTE 36p.; Field Project, NAES College, Twin Cities.
PUB TYPE Reports - Descriptive (141)
EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *American Indians; Child Abuse; *Child Advocacy; *Child Welfare; Courts; *Due Process; Foster Care; Volunteers
IDENTIFIERS Court Appointed Special Advocate Program; *Guardian Ad Litem; *Minnesota (Hennepin County)

ABSTRACT

A guardian ad litem or court appointed special advocate (CASA) is appointed by a judge to speak for the child's best interests in court hearings related to allegations of child abuse or neglect. This paper examines the need for more American Indians to become involved as volunteer guardians ad litem. The first part provides historical information about guardian ad litem programs and some statistics about child out-of-home placements in Minnesota and Hennepin County. About 20-25 percent of CASA cases in Hennepin County involve American Indian children; Indian children are removed from their homes at a rate 10 times greater than that of White children. Culturally sensitive advocates are needed to deal with a court system viewed by Indians as negative and adversarial. The second part explains the court process, detailing how a child becomes involved in the system and the process that protects the child's rights. There are also some safeguards for the parents so they will have due process if they are accused of child abuse or neglect. Part 3 discusses how one becomes a guardian ad litem in Hennepin County, including recruitment, completion of an application, interview with a practicing guardian ad litem, and training. Barriers to American Indian participation are identified. The conclusion includes recommendations for recruiting and retaining more American Indian guardians ad litem. (Contains 10 references and a glossary.) (SV)

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Speaking For Our Children

A Look at the Guardian ad Litem Program

by

Valerie A. Sheehan

Submitted to the author's Degree Committee
in fulfillment of the
Field Project Requirement

NAES College/Twin Cities

November 14, 1994

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Acknowledgments

This paper is dedicated to my grandmother, Lizzie Hyde Wilson AKA Gimiwanikwe who raised me and taught me everything I know about being a parent. Without her love and devotion, I may have been placed in a white foster home or adopted by non-Indian parents. I have the utmost respect for my grandmother who survived the boarding school experience at Flandreau, South Dakota and raised her own seven children, three grandchildren and several neighbor children. She taught me the best she could to be strong and to endure. She told me to pass for white because it would be easier than being an Indian. While writing this paper I finally have forgiven her for this because she did it out of love for me. I also dedicate this paper to all the Indian children who are in out-of-home placements. Maybe this paper will inspire our community members to become active in solving the dilemma of how to function as guardians ad litem in the Indian community.

Migwetch to all those who have helped me as I worked on this paper. To my companion, Hpu Hpu who has encouraged me to complete my education and has been understanding when I couldn't spend time with him because I had a class or needed to go do research. Also to Greg, my son for turning down his stereo speakers so that I could work at the computer in the basement and leave my papers scattered about. You can use the pool table again, Son. And especially to my mom who I haven't visited with as often as she'd like.

Gakina-indinawaymagahnag

Introduction

I chose Child Advocates, Hennepin County Guardian ad litem Program serving the District Court - Juvenile Division as my field project for my degree paper because there are only two American Indians who volunteer as guardians ad litem(GAL). I serve as an American Indian guardian ad litem and currently have two cases that I am working with. Both cases involve children under the age of three years old who have been abused or neglected by their mother. Both moms have personal chemical abuse issues and are attending Alcoholic Anonymous (AA) groups and parenting classes. I visit the children regularly and attend court hearings to speak for the best interests of the child during these proceedings. Indian children are disproportionately represented in the judicial system and account for about 15-20% of out-of-home placements in the county. It is important for Indian families to have advocates who are culturally sensitive especially in cases where there are allegations of abuse and neglect. Because the parents are the alleged perpetrators, they are further alienated by the system if they are dealing only with Caucasian social workers, judges, attorneys, and advocates.

The courts must proceed with much caution when dealing with Indian children since the 1978 Indian Child Welfare Act (ICWA). The ICWA allows for Tribal Court jurisdiction in cases where the child(ren) are enrolled or eligible for enrollment. Therefore, a volunteer must be familiar with tribal law as well as state and local laws that are in effect. Often in court, there will be an Indian Child Welfare monitor and a tribal representative, as well as the guardian ad litem.

A guardian ad litem is an adult who has been trained as an independent investigator for the court. He/she is a spokesperson who can totally, unequivocally, and actively pursue the child(ren)'s rights and interests. A guardian ad litem or court appointed special advocate (CASA) is appointed by a judge to speak for the child(ren)'s best interests in court hearings when there have been allegations of abuse or neglect. Because so many Indian children are in out-of-home placement there is a need for more American Indians to become involved by serving as volunteer guardians ad litem.

This paper is divided into four parts. First, I will provide some historical information about the guardian ad litem programs. I will include some statistics about out-of-home placements in Hennepin County and in the state of Minnesota. which are broken down by ethnic heritage. It is important for Indian families to have advocates who are culturally sensitive especially when dealing with the court system which is viewed by Indians as negative and adversarial.

The second part of this paper will explain the court process. I will detail how a child(ren) becomes involved in the system and the process that assures that the rights of the child(ren) are protected. There are also some safeguards for the parent(s) so that they will have due process when they are accused of abuse or neglect of their child(ren).

In part three, I will discuss how one becomes a guardian ad litem in Hennepin County. I will show how a volunteer is recruited, completes an application, has an interview with a practicing guardian ad litem, and is trained. Some of the barriers to

participation as experienced by an American Indian will be identified.

The conclusion includes a recommendation for recruiting and retaining more American Indian guardians ad litem. I will outline an idea that will increase the number of Indian volunteers in Hennepin County. It will encourage participation of Indian community members whose employers will agree that they can utilize release time during business hours to become involved in a volunteer program to help Indian families. The strength of the project will be that it is community-based and adaptable to the specific group of employees who sponsor this effort. Because Indian people are involved, it may help to alleviate some of the mistrust that Indian parents have for the system. This project will reinforce the idea that our children are our future.

Part I Historical Perspective

Historically, the child's advocate in court was also an attorney, thus the name guardian ad litem. They were paid to investigate each case and advise the court on the child's best interests. This type of thorough investigation is very time consuming and it was discovered that the case load was too great so alternative ideas were proposed. One idea was to train a cadre of volunteers whose only consideration was for the best interests of the child. Initially, this idea was met with resistance. It was thought that the average person would not be able to grasp the complex legal issues involved nor would they have knowledge of the physical, psychological and developmental aspects of children. As more children were placed

out-of-home, it became increasingly evident that the idea of trained lay advocates needed to be revisited.

Judge David W. Soukup, then Presiding Judge of King County Superior Court in Seattle, Washington decided that this idea had merit. He proceeded to recruit and train community volunteers as guardians ad litem. The program became active on January 1, 1977 and during the first year provided 110 trained guardians ad litem for 498 children in 376 dependency cases.¹ Since the establishment of the first CASA program in Seattle, the CASA movement has expanded to include more than 316 programs, with at least one program in all but five states. A national CASA Association has been established to provide training, startup grants, conferences, technical advice, newsletters, and resource materials. CASAs have also received the approval and support of the National Council of Juvenile and Family Court Judges.²

The Hennepin County Guardian Ad Litem Program began in October of 1978. Patterned after the successful program in King County, Washington, the program staff receive approximately 2,400 telephone calls per month. Of these, about 600 require some type of follow-up or investigation. About 75-80 new cases are opened monthly. Statistics show that 60% of the cases involve African-American children, about 20-25% involve American Indian children and the remaining 15-20% are Caucasian. Few Asian children are seen in abuse/neglect cases.³

¹CASA Court-Appointed Special Advocate for Children...A Child's Voice in Court.

²Study of Guardian Ad Litem Programs Suggests Need for Further Research. 1989. Youth Law News. Grimm, Bill.

³McClain, Monica. 1994 Personal Interview.

In Minnesota, American Indians represent only 2 percent of the State's child population, but American Indian children in out-of-home care (2,130) account for 12 percent of all placements.⁴

Why is there a need for more American Indian guardians ad litem? The Racial Bias Task Force reported that in 1990, Hennepin County data indicates that although people of color represent 6% of the state's total population, children of color represent 36% of all out-of-home placements; of these, 17% are American Indian. This means that American Indian children are being removed from their homes today at a rate 10 times greater than the rate at which white children are removed from their homes. A legal service attorney observed that:

. . .the misapplication or non application of the ICWA is appalling. Fourteen years after passage, county workers are still culturally ignorant at best and racist at worst. Guardians ad litem have demonstrated, in most of the ICWA cases I have worked with, hostility toward Indian families which results in recommendations contrary to the spirit and letter of the law. The courts are unpredictable: some know and apply the laws, some don't. The courts are sometimes less than respectful towards tribal representatives.⁵

In the 14 years that Hennepin County has had a GAL program, many strategies have been developed to increase the number of

⁴Quality Services Div. Family & Children's Services Div., Children in Out-of-Home Placement. 1992

⁵Racial Bias Task Force Report, 1993

guardians ad litem who are American Indian. Well known activist Emily Peake has been involved with the program since it began. She has worked tirelessly to assure that American Indian children have someone of their own culture to speak for them.

She has tried to recruit elderly Indians to serve as CASA's by offering a small stipend to supplement their incomes. This idea has a lot of potential but many older American Indians are very involved with their own grandchildren, often raising them and don't have time to become involved in a volunteer program. Oftentimes they serve as unofficial guardians for their grandchildren particularly in situations where the parents are coping with alcohol and/or drug problems. Another factor in the inability to retain Indian volunteers is the lack of support from other Indian community members. The idea that if you are a CASA, you are a part of the oppressive court system is hard to counteract. As a guardian herself, Emily tells of being spit upon and condemned by an Indian family when she recommended that the children remain in foster care until the mother had more time to establish herself after her release from alcohol treatment. Emily reasoned that to allow the children to return home when the mother had only been out of treatment for two weeks was setting the family up to fail.

In May of 1992, a grant was funded by the National CASA Association to improve guardian ad litem services to American Indian children in Hennepin County. Ms. Peake was hired to recruit Indian persons to serve as volunteer guardians ad litem; improve training for non-Indian volunteers serving as guardians ad litem for American Indian children; and create a support system with the

American Indian community for the program and its volunteers. An American Indian Advisory Council was established who would meet regularly to identify barriers to the involvement of American Indians as volunteer GALs, develop strategies to address those barriers, recommend support and retention strategies, identify components for pre-service and in-service training, and recommend changes in policy or practice necessary to improve the program's cultural sensitivity.⁶

The project was widely accepted, an advisory council was formed, and meetings took place where policies were agreed upon. A tour of several reservations was scheduled and Hennepin County Guardian Ad Litem staff were able to meet with tribal officials and social service providers on the Leech Lake, Red Lake and White Earth reservations. Director Susanne Smith stated during her interview that the long ride alone with the tour guides, Katie Turner, Urban Social Worker for the Minnesota Chippewa Tribe and Emily Peake was perhaps the best part of the trip because they talked freely about the issues in the Indian community that presented barriers to participation by Indian people as CASAs.⁷

Over the course of the year, the attendance at the meetings dwindled. People lost interest and eventually the project ended. One of the outcomes was that there was disagreement among Indian community members about whether to pay guardians ad litem. This idea of paying people came from the community who said that Indian people would not be able to volunteer because most needed

⁶National Court Appointed Special Advocate Association (NCASAA) Expansion Grant App. 1978.

⁷Smith, Susanne 1994 Personal Interview.

to work to survive and don't have the time to volunteer when much of the work of the guardian ad litem is done during business hours.

Part II Court Process

How does a guardian ad litem get involved in a particular case? Child abuse and neglect cases are usually initiated when a report of suspected child abuse or neglect is made to Child Protection intake. Anyone can report suspected abuse or neglect but certain persons are termed Mandatory Reporters. These are usually teachers, child care workers, doctors, hospital administrators, scout leaders, police officers, clergy (if not acting from a counseling role), and others who "know or have reason to believe" that a child(ren) is being neglected and/or physically or sexually abused.⁸ In Hennepin County, reports are made to the Child Protection division or to the local police department. The county then conducts an investigation and determines whether the child(ren) are in need of emergency shelter. Sometimes child(ren) are removed from the home during an arrest and taken to a shelter where child protection is then notified. The County Attorney may choose to file a petition in juvenile court to have the child(ren) declared abused or neglected and the local district attorney may decide to file charges against the suspected abusive or neglectful parent(s) under the state's criminal statutes.

Within 72 hours of the child's removal/placement, an Emergency Hold Hearing is held to establish probable cause for intervention, determine where the child will reside until the next

⁸The Comprehensive Training Program for the CASA/GAL, 1989. MN Supreme Court Permanent Families Task Force

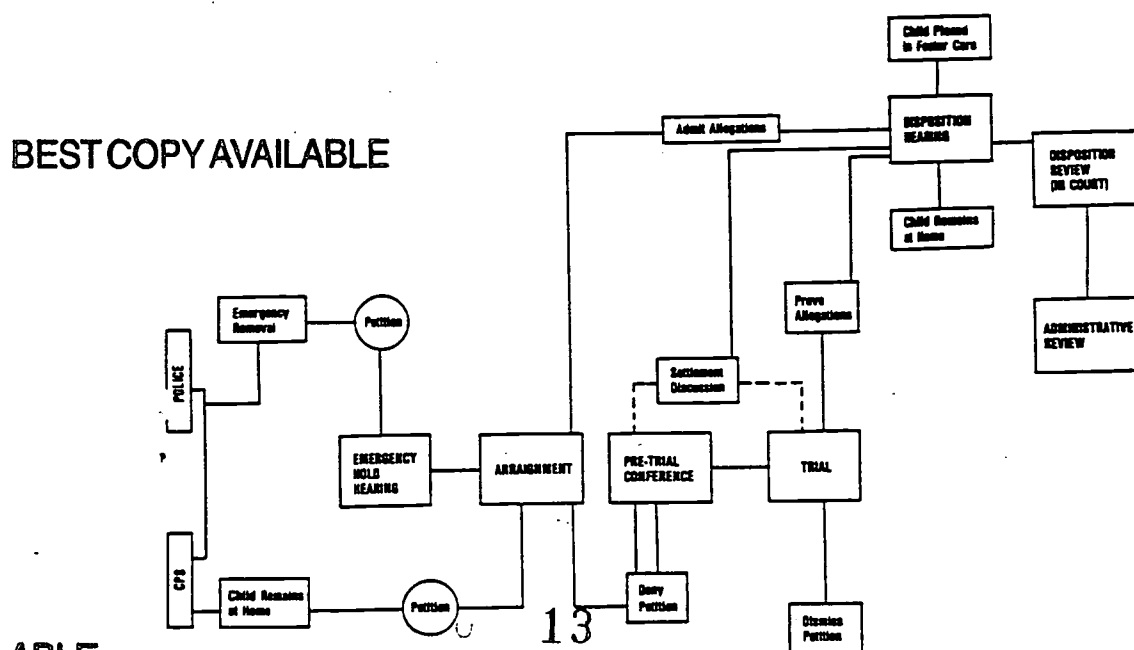
hearing, and establish public defender eligibility for the parents. Staff from the Hennepin County Guardian Ad Litem Program will attend the hearing to receive the appointment and notify a trained GAL/CASA to take the case. Within 8 days of a child's placement, the defense counsel can request a hearing to contest removal of child(ren) from the home and finding of probable cause. The defense can present witnesses and evidence to support their claim that there is no probable cause and that the child(ren) should be returned to the home. The court then decides if the child(ren) should return home or remain in foster care.

The next step is the Arraignment Hearing which is usually held within 10 days of the child's placement. At this time the parent(s) either admit or deny the allegations. This hearing is usually the first time that the guardian ad litem is recognized by the court and is asked to comment on what he/she feels would be in the best interests of the child(ren). There may be a pre-trial conference where the court hears motions of the attorneys. The discussion will focus on whether or not to settle the case. The GAL may be asked for an opinion on the child(ren)'s needs for inclusion in the case plan. This hearing is an opportunity for the parties to settle and avoid going to court. Prior to the actual trial, which must be held within 90 days of the removal of the child(ren), any one of the parties may call for settlement discussions. The parent(s) may admit to some of the allegations in the petition in return for dismissal of other allegations. The court may accept or reject the agreement. The social worker for the case will devise a case plan for the parent(s) to follow in order to get their child(ren) back in

their custody. A typical case plan will involve alcohol and/or drug treatment, successful completion of parenting classes, and a stable living arrangement.

The purpose of a trial is for the County Attorney to prove that the information in the petition is true. All parties to the action have the right to call witnesses, and offer evidence to prove their case. Because this is juvenile court, there is only a judge to decide the case. When all evidence is presented, the judge either makes a decision or takes the case under advisement and announces the decision at a later date. A disposition hearing is then held and the child(ren) are either returned to their own home, placed in foster care while the parent(s) fulfill the court-ordered goals set forth in the case plan, or the judge orders a Termination of Parental Rights (TPR), which frees the child for placement in a stable home. All during this process, the guardian visits the child(ren), monitors the progress of the parent(s) in following their case plan, and informs the court of any relevant information regarding the best interests of child(ren).

Juvenile Court Process Flow Chart



I became interested in the guardian ad litem program during my first semester at NAES College when the subject was discussed in a class on the Indian Child Welfare Act. Our speaker was District Court Judge Isabel Gomez who spoke about the need for court appointed special advocates (CASA) or guardians ad litem; volunteers who would act as vocal advocates for children who are in the child protection system. The role of the guardian is to serve as an independent investigator for the court and to speak on behalf of the child(ren)'s best interests. A CASA reviews the case file of the child(ren), visits the child(ren) and interviews family members, caseworkers, foster parents, doctors, therapists, school personnel, and others who are knowledgeable about the child(ren) and the child(ren)'s situation. The guardian forms an opinion regarding the child(ren)'s best interests and expresses that opinion to the judge during the court hearing. After a decision is reached by the court, the guardian follows up to make sure that the child is receiving care and the family is following the case plan set forth by the court. The child advocate is expected to be objective and to speak for the best interests of the child(ren).

Part III Becoming a Guardian Ad Litem

I called the number Judge Gomez left to ask for more information and was told that there is an application, interview and forty hours of training required to become an advocate. Quite frankly that is enough to scare anyone off. Questions run through your mind: How will I find time to volunteer when my responsibilities include attending court hearings which are usually

held during business hours? How will I find the time to complete forty hours of training? What happens if when I take the case, I find out that I know the family? How much time will this involve? What if I get too attached to the child(ren)? If I decide to become a guardian ad litem, can I choose to work only within the Indian community? I realized that there were more Indian children in the court system than Caucasians and yet there was only one Indian guardian ad litem in all of Hennepin County.

The more I thought about it, the more questions and concerns I began to have. Concerns included thinking about who can afford to be a guardian ad litem? Most of the advocates are middle-aged, middle-class Caucasian women who would be bringing their own values to their role as an advocate for Indian children. How can they speak for our children? What standards do they hold for the families of these children? Because they do not know Indians, are they able to be objective? Are they able to relate to an Indian child? How does it feel to have been removed from your home, placed in a foster home with strangers, and go to court to find that the person the court has appointed to speak for you is non-Indian? I made the decision that I needed to fill out the application and find a way to attend the training session. I told myself that at any time I could change my mind and not go through with it. As a volunteer, you can always quit.

When the application arrived, I was stunned by some of the questions and also by the length of the application. It was five pages long. Many of the questions required more than just a yes or no answer. No wonder there was only one American Indian guardian ad

litem in the system! The questions about my educational background, work experience and volunteer experience were pretty standard. The third part of the application was titled:

SECTION III CRIMINAL RECORD/TREATMENT HISTORY

(The information requested is essential to conduct the record check. You are not legally required to supply this information. However, if you choose to withhold this information, a final decision on your application cannot be made.)⁹

List any other name by which you ever have been known or are now known:_____

Have you ever been convicted of a law violation other than a minor traffic offense? If yes, what was your offense? Do you have any friends or relatives confined at the Hennepin County Adult Corrections Facility? Hennepin County Home School? Hennepin County Juvenile Detention Center? If so, please list name(s) and relationship?

I'm sure that many American Indian people would find it difficult to respond to some of these questions. Some would be embarrassed to admit that they had family members who were incarcerated. They might feel that having a family member in one of these facilities would jeopardize their chance to become a guardian ad litem and not bother to follow through with the application process. Who are these people trying to rule out anyway? So I went ahead and filled out the application and mailed it back.

While waiting for someone from the Hennepin County Bureau of Community Corrections to call me and tell me if I should come

⁹Volunteer Services Application. Hennepin County Bureau of Community Corrections. 1993.

for an interview, I approached my boss with a plan for covering my work duties while I was attending forty hours of training. I proposed that I take a week's vacation so that I could attend the training. My boss said no. I tried Plan B, where I would work three hours daily and eight on Saturday which would mean that I would work 23 hours and take vacation days for the other 17 hours. That idea was also met with a no. When I called the guardian ad litem program to tell them that I wanted to withdraw my application because of my inability to get time off from work, I was told that they had arranged to have training scheduled for evenings and weekends and would that work into my schedule? This was the first time that I felt like I could actually accomplish attending the training and become a guardian ad litem. I didn't hear anything from the program for quite awhile and had begun to believe that my background was unfavorable and I would not be accepted. I also began to feel very angry and that the whole application process was a barrier to American Indian community members who might consider volunteering but would be put off by the application and having to go through a formal interview process. This type of insensitivity can be very intimidating.

Finally, a call from the Hennepin County Guardian Ad Litem Program came. They wanted me to come in for my interview. The caller assured me that the interview was only a formality and that I was accepted into the next training class. She explained that the weeding out process occurs after the training session. At that time, another interview would be scheduled so that the potential volunteer could ask questions and make an eighteen month

commitment, if the interviewer recommended that you continue. I was very anxious at my interview. I dressed very professionally because I wanted to make a good impression on my interviewer. When I arrived at the office, I was greeted by a Caucasian women who seemed rather distant but not unfriendly. She offered me coffee and explained that a volunteer who had been a guardian ad litem for a number of years would be interviewing me. I was pleased when I met Ummil-Kheer Shabazz. She is a tiny African-American woman of indeterminate age with a quick smile and an easy-going personality. I liked her immediately. She complimented me on my attire and told me alot about herself. She made me feel very much at ease. She went over my application, assuring me that I was an excellent candidate to become a guardian ad litem. She talked about how she wanted to help African-American kids and how being a volunteer with the program had made her decide to become a foster parent as well. She was very encouraging and told me that she thought that my background would make me well suited to be a CASA. She reiterated how desperately American Indian children need guardians who understand their cultural background and their needs.

We talked about how Caucasian values such as different housekeeping standards often make it difficult for the reunification of families and how many times the Caucasian volunteer doesn't understand the Indian Child Welfare Act or the Minority Heritage Preservation Act and makes recommendations that go against these two laws. I felt very encouraged after my interview and more determined that I would become a volunteer and even help to

recruit other Indian people. I had talked with a classmate at NAES and found out that she was going to volunteer too, so I was looking forward to attending the training and having another Indian person to pair up with.

Training sessions are held in a conference room on the ground floor of the Health Services Building. As I entered the room, I looked around for a friendly face and finding none, I chose a chair next to the end of the table so that I would only have to sit by one person I didn't know. I hoped my friend from school would walk in so that I would know someone. Others came in alone; some in groups of two or three. I was relieved that of the 25 people, there were at least 5 African-American people. At last another Indian walked into the room. She looked familiar although I couldn't think of her name. She smiled at me when she took her seat across the table and I breathed a sigh of relief.

The training began with a video titled Speak Up for a Child which presented a history of the CASA (court appointed special advocate) program. Group introductions followed and proved to be very interesting. Each person had to tell about themselves and why they were interested in being a guardian ad litem. I discovered that many of the volunteers had no children of their own but were interested in working with children. Some were lawyers, students, homemakers, others were nurses, counselors and secretaries. It was amazing to note the varying backgrounds and reasons for becoming a volunteer. The evening went fast and finished up with a roles/responsibilities questionnaire designed like a pretest to see what we think the role of a guardian ad litem is. I decided that this

wasn't so bad after all but once again I thought about the barriers for most American Indian people. I was lucky I didn't have young children at home to worry about. The other American Indian volunteer also had an adult child making it easier to volunteer without child care difficulties or sick child worries. Each participant was given a large loose-leaf binder containing the written material for the ten training units. Training would last through the month of April with sessions from 6 - 8:30 p.m. Tuesday and Thursday and from 9 - Noon on Saturday for a total of 24 hours. We were encouraged to read ahead since the evening training was being condensed and we would not be going over each unit but only the highlights.

The training sessions in general were excellent. Since this was a new topic to most of us, it was very informative. The training was varied with many hands on types of exercises and opportunities to practice what we were learning. It was very valuable to listen to other participants since their observations and experiences were different from my own. Training was done by all of the staff usually with two pairing up for each session. Guest speakers were brought in for their expertise in certain topics. A Hennepin County child protection worker was brought in to discuss the role of child protection and help walk through the stages of what happens when there is an accusation of abuse or neglect. My interviewer, Ummil-Kheer did the presentation on working with African-American families. She was excellent and discussed do's and don'ts when working in the African-American community. She talked about how many subtle things done by the guardian ad litem are perceived by

community members to be offensive or rude. An example is getting out of their car and locking their handbag in the trunk when they come out for a home visit. Or brushing off the chair before they sit on it in the home of the foster care mom. Since most of the potential guardians are Caucasian this information is very timely.

Working with American Indian families was more historical in content. Mr. David Larsen stated that it is important that non-Indians understand why American Indians have a sense of mistrust whenever the court system or social workers get involved with their children. The presenter talked about the boarding schools and how Indian children were taken from their families in an attempt to assimilate them into the dominate society. He talked about how this has created many of the problems that American Indians have today which manifest themselves in the high rates of suicide, alcohol/drug problems, school drop-out rates, and poverty. We also received a hand-out titled Tribal Literacy Handbook which is very general but could be helpful to the non-Indian as a reference to help him/her familiarize themselves with Indian people.

The training emphasized definitions of child abuse and neglect including how to distinguish between poor parenting skills and actual harm or threat of harm. The role of alcohol and drug abuse was thoroughly discussed since much of the neglect and abuse is attributable to parents' usage. Guardians are given much information about developmental stages in children so that they can assess where the child is at compared to other children of the same age. This assures that the GAL can speak knowledgeably with other professionals who are involved in this case and have information

about the child(ren) It is essential to understand the technical language used in dealing with social service agencies and the court system. Practice exercises helped to put learning in perspective. I thought that actually look at some case studies and talk about our findings was very helpful. It was interesting to work with other volunteers to see where their views differed. Role-playing exercises were very helpful in being able to hear what others would do or say in a situation.

Extensive instruction in communication and information gathering were most useful. Dealing with all the parties in a child neglect or abuse case can be very stressful. The ability to conduct oneself in a positive manner at all times is extremely important for the guardian ad litem. As a GAL, you will talk to professionals, not only in the court and social service system but in the health, law enforcement, and educational fields. You will also talk with family members and the child. This diverse group of people to deal with demands various communication skills and effective writing skills. Documentation is important, should you be unable to attend a hearing and need to submit a written report to the courts. Another useful skill is observation. Many clues that express how a child is doing are very subtle and must be observed and recorded at a later time.

It was helpful that we were assigned our first case before our final week of training. We could ask questions and began to apply what we learned immediately. I had asked to work only with American Indian families because the need is so great and there aren't enough Indian guardians to go around. Many of the non-

Indians in my training group also said that they would prefer to work only with Indian families.

One major barrier to being an Indian guardian is that you might know the family involved. If this happens, you can resign from the case so that you will not have a conflict. I'm finding that being a guardian ad litem puts one in the position of being viewed as "part of the system". Much education needs to take place in the Indian community if we are to recruit more Indian people to serve as CASA's. This is an extremely difficult volunteer assignment but also a very rewarding experience when you work closely with a mother who is trying very hard to reunite with her children and make a family again.

The application form itself is a barrier for Indian people in becoming a guardian ad litem. The reading level seems relatively high. Without performing a scientific test, I would say it is beyond the eighth grade level. This may be a barrier for some people whose formal educational attainment level is at eighth or ninth grade. The application also requires a lot of written responses which is intimidating to many Indian people who are good speakers but lack writing skills. I also feel that some of the questions can be construed as intrusive. I was offended by having to answer questions regarding my drug/alcohol or mental illness history. These questions might be saved for an oral interview so that the applicant can avoid putting on paper answers to questions which he/she might find sensitive. A disproportionate number of Indian people have been incarcerated when compared to the population level, therefore the questions about relationships to people at either

the Hennepin County Adult Corrections Facility, the Hennepin County Home School, or the Hennepin County Juvenile Detention Center may seem irrelevant and intrusive. I personally found them intrusive and I would question the appropriateness of including the questions in a written application or including them at all. If a member of your family or a friend were at any of these institutions, how does that affect your ability to be a responsible guardian ad litem? Sending out a letter, a page of instructions and a five page questionnaire is rather intimidating to most anyone. The idea of being judged by unseen, unknown people based on the answers to some of these questions is not a pleasant thought.

Another barrier to becoming a volunteer court appointed special advocate is financial. Most CASA's are white, middle-class women who do not work outside the home. They are financially able to devote the amount of time it takes to thoroughly investigate a case, visit the child(ren), and appear in court. Much of the work of the guardian ad litem needs to be accomplished during business hours. Aside from attending court hearings, most of the other people involved in each case keep business hours and you need to be available to receive call backs from therapists, medical personnel, and others. If you have a job where you cannot receive phone calls, it may be difficult for you to investigate thoroughly. Visiting the child(ren) is also difficult if you work full-time and the foster care provider is also employed. Most Indian people do work outside the home and can find time to volunteer only a few hours during the week.

The location of the Hennepin County Guardian Ad Litem Program office can be considered a barrier. Many Indian people do not like to go downtown. They prefer instead to remain in their own community among familiar faces. The office is in the same building as the Hennepin County Juvenile Justice Center and although this is convenient when your case is in court, it is not a very welcoming place for Indian people. The Juvenile Justice Center is one of those buildings that may conjure up bad memories if the applicant was there for other reasons such as court with a young family member. I also observed that the staff of the program are not very welcoming. None of the staff of the guardian ad litem program are American Indian. There is an observable difference in the way Caucasian volunteers are greeted compared with the way I am greeted when I come to the office.

The Indian community is quite closely knit and small. Many times an Indian person knows the family or is even related to someone who is involved in a particular case. This can create a conflict not only for the guardian ad litem but also for the family who is in crises. Indian people often do not want others in the community to know that they are having problems. This fear of discovery often makes it difficult for the family to discuss their issues with a person from their own community. They may be afraid that the confidentiality of their case will be compromised and everyone in the community will know their business.

According to Robert V. Dumont, Jr., for most Indian people, the desire to be of service to the community is not a foreign notion. Instead it is a value shared by members of the community to

contribute to the common good¹⁰. In the Indian kinship system, aunts and uncles are like another mother and father and cousins are like brothers and sisters. Grandmothers and grandfathers commonly took care of the children while the younger adults made sure that there was adequate food, clothing and other necessities of life for the whole community. The responsibility for raising the children and teaching them values, culture, and traditions fell on all of the adults of the tribal group. In society today, this extended family system is looked upon as being negative and pressure is placed on families to become more mainstream and nuclear in their family configuration. I remember when I was growing up, how if I did something wrong in front of our neighbors, they would correct me and then tell my grandmother, who would also correct me when I returned home. This reinforcement of community mores and values, although a nuisance, served to make me aware of how my behavior would reflect not only on my family but also how it would impact my community. I advocate a return to the traditional way where every adult was considered a relative with the responsibility and the authority to discipline and correct the behavior of the younger family members.

It is very difficult to be a guardian ad litem because your community may begin to view you as being a part of the "system" that has taken Indian children away from their families. This distrust of the "system" began with the boarding school movement during the late 1800's. The federal government policy that all

¹⁰Dumont, Robert V., Jr. Notes on Community Service for Native American Communities.

children must attend school impacted Indian families by removing Indian children from the cultural practices of their people and sending them to federal and mission boarding schools. These boarding schools were designed to force the children to assimilate and forget their language and cultural traditions. Many children were unable to return home except for brief visits once a year so that their connection to the family system was severed. When they did return home, they were alienated and unable to speak the language of their elders who were no longer able to teach them or pass down their traditions.

This bad experience created much distrust among Indian people. It also created an entire generation of adults who had little or no parenting skills. The only parenting they knew came from living in an institutional setting where there was little love and harsh punishment was the norm. Because of this inability to feel good about oneself, many Indian adults resort to alcohol abuse and other self-destructive behaviors which lead to the further breakdown of the Indian family system.

Indian guardians ad litem can serve as role models to the children they work with. Many of these children have no adult role models of the same ethnic background as themselves. Without this, their already damaged self-esteem can erode further which then traps the child(ren) in a cycle of behavior that can encourage criminal behavior.

It is difficult for a non-Indian to avoid using their own standards when making judgments or determinations about something that they really have no understanding of or that they

were taught to believe is inherently bad because it is different. The example of the nuclear versus extended family system comes to mind. Finding an uncle, aunt, and their three kids living with the family of four who are the foster care parents for a child in a home with only two bedrooms has the potential for causing the non-Indian guardian ad litem to recommend that the child be removed from an overcrowded home. I heard one CASA state during training that she would feel a responsibility to remove a child from a home if she knew that the family was practicing their traditional ways and attending Sweat Lodges regularly and that the child she was a guardian for was encouraged to participate. This lack of cultural sensitivity could lead to decisions based on one's own cultural bias that affect the child and also go against the Indian Child Welfare Act.

The Indian Child Welfare Act was passed in 1978 in response to the large numbers of Indian children that were being removed from their homes and placed with non-Indian families. According to the Racial Bias Task Force Report, Indian children were being removed from their parental homes at a rate from 2 to 22 times greater than that of non-Indian children. The ICWA established guidelines that must be followed when working with Indian children. It gives the tribal government jurisdiction over children who are involved in child custody proceedings which includes foster care placement, termination of parental rights, preadoptive placement, and adoptive placement. The ICWA states that the child(ren) must be placed with a member of the child(ren)'s extended family; or with other members of the Indian child(ren)'s tribe; or other Indian families.

The Minnesota Indian Family Preservation Act, passed in 1985 further defines child placement proceedings and provides for permanency planning which means the systematic process of carrying out, within a short time, a set of goal-oriented activities designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers, and the opportunity to establish lifetime relationships. It also establishes placement prevention and family reunification services that are designed to help children remain with their families or to reunite children with their parents.

Part IV Conclusion

One of the reasons that the guardian ad litem program seems to work is that it is based on volunteers whose only agenda is speaking out for the child's best interests. This is not tied to a pay check but out of concern for children who have been abused or neglected.

Coordinator of Volunteers, Monica McClain expressed her frustration about the inability of the program to recruit and retain American Indian guardians.

As a matter of fact, there's this push in the background not to deal with Native American children at all because there's a lot of work involved, and it's a lot of work from the staff's point of understanding what's going on, the tribal laws that are there as well as trying to incorporate that with the existing juvenile court system. And no matter what the recommendation that's made by the guardian or the child protection worker, whatever the tribal law says is what goes in our court system. So there's a push in the background,

so why bother. I am one of the few people that says, regardless of what the tribal law says, that child's voice still needs to be heard in the courtroom, so we still should have guardians but I'm only one person. I'm in agreement with you that we still need more Native American people to be guardians ad litem. I have been trying to do all kinds of different things to facilitate that process. ¹¹

Ms. McClain shared with me an idea she's currently working on that forms partnerships with organizations that work with people in communities of color. Staff members of these organizations are given release time from their jobs to volunteer as guardians ad litem. This is modeled after many corporate employee volunteer efforts which donate employee time to a specific cause. An example is the annual Paint-A-Thon, where employees from a large corporation get together and paint an elderly community member's house. This type of effort provides good publicity for the corporate sponsor, an opportunity to create camaraderie among the employees, and a much needed paint job for a low-income elderly resident.

I'm convinced that a similar type of partnership could work in the Indian community. It would take careful planning and artful negotiation to achieve but if successful would engage the Indian community in becoming a part of the effort to speak for our children. Getting the Indian organizations in Hennepin County to agree to be a part of this initiative would involve selling this concept to the whole community beginning with articles in The Circle discussing the needs for more American Indian guardians. Enlisting

¹¹McClain, Monica. 1994 Personal Interview.

the help of such organizations as the Minnesota American Indian Chamber of Commerce , Healthy Nations Project which is based at the Minneapolis American Indian Center or the Minneapolis Urban Directors (MUD Group) who could work with Indian interns to develop a plan to inform organizations about the proposed project and get them to buy into the idea of allowing for release time for employees to become guardians. It might be necessary to offer monetary or some other type of incentives initially to get the organizations to see the value of investing in the future of our children by becoming involved in the court system and assisting Indian families to reunite and become strong. Statistics are available that detail the amount of time each guardian puts into every case. This can be broken down further so that actual time spent away from work is minimal. On the average, I spend approximately 5 hours a week during business hours on a case. Hypothetically, if 10 Indian organizations were to get involved and 5 staff members from each organization volunteered that would yield 50 American Indian guardians.

Training for these new guardians ad litem would be held at the Minneapolis American Indian Center or another one of the participating organizations to assure accessibility. Judges could arrange to hold court hearings in the community too so that the setting would be more comfortable for the guardians and the Indian families who are involved in child protection proceedings. Studies have shown that community based programs work best in tribal communities. Participation in solving the problems of the community increases involvement which ultimately could lead to

community intervention, thus solving the problem of too many Indian children being removed from their homes. This means that parenting classes taught by successful community parents could serve as a preventative measure and ongoing AA and support groups would help young parents before they became a part of the court system.

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GLOSSARY

Commonly used terms and legal definitions

Abuse

Any physical injury, sexual abuse, or emotional abuse inflicted on a child other than by accidental means by those responsible for his/her care, custody and control.

Advocacy

Interventive strategy in which a helping person assumes an active role in assisting or supporting a specific child and/or family or a cause on behalf of children and/or families. This could involve finding and facilitating services for specific cases or developing new services or promoting program coordination. The advocate uses his/her power to meet client needs or to promote causes.

Allegation

An assertion or statement of a party to a legal action, which sets out what he or she expects to prove. In a child abuse case, the allegation forms the basis of the petition or accusation containing charges of specific acts of maltreatment which the petitioner hopes to prove at the trial.

Arraignment

Arraignment is the bringing of a person accused of a crime before a court to be advised of the charges against him or her and to state his or her answer to the charges.

Best interests of the child

Child Standard for deciding among alternative plans for abused or neglected children. Usually it is assumed that it is in the child's best interest and least detrimental if the child remains in the home, provided that the parents can respond to treatment. However, the parent's potential for treatment may be difficult to assess and it may not be known whether the necessary resources are available. A few authorities believe that except where the child's life is in danger, it is always in the child's best interest to remain in the home. This view reflects the position that in evaluating the least detrimental alternative and the child's best interest, the child's psychological as well as physical well-being must be considered.

Child abuse and neglect

All-inclusive term, as defined in the Child Abuse Prevention and Treatment Act, for : "the physical or mental injury, sexual abuse, negligent treatment or maltreatment of a child under the age of eighteen by a person who is responsible for the child's welfare."

Child protection services

A specialized child welfare service, usually part of a county department of public welfare, legally responsible in most states for investigating suspected cases of child abuse and neglect and intervening in confirmed cases.

Court appointed special advocate (CASA)

Adult appointed by the court to represent the child in a judicial proceeding. Used interchangeably with guardian ad litem.

Court order

Directive issued by the court having the authority of the court and enforceable as law. Written command or directive given by the judge.

Foster care

A form of temporary substitute care, usually in a home licensed by a public agency, for children whose welfare requires that they be removed from their own homes.

Guardian ad litem (GAL)

Adult appointed by the court to represent the child in a judicial proceeding. Under the Child Abuse Prevention and Treatment Act, P.L. 93-247, a state cannot qualify for federal assistance unless it provides by statute "that in every case involving an abused or neglected child which results in a judicial proceeding a guardian ad litem shall be appointed to represent the child in such proceedings." Such guardians are usually appointed to safeguard the rights of persons otherwise incapable of handling their own interests.

Mandated reporters

Persons designated by state statutes who are legally liable for reporting suspected cases of child abuse and neglect to the authorities. The persons so designated vary according to state law, but they are primarily professionals, such as pediatricians, nurses,

school personnel, and social workers, who have frequent contact with children and families.

Neglect

Failure by a person responsible for a child's care to supply a child with necessary food, clothing, shelter or medical care when reasonably able to do so or failure to protect a child from conditions or actions which imminently and seriously endanger the child's physical or mental health when reasonably able to do so.

Parenting skills

A parent's competencies in providing physical care, protection, supervision and psychological nurturance appropriate to a child's age and stage of development. Some parents, particularly those whose own parents demonstrated these skills have these competencies without formal training, but adequacy of these skills may be improved through instruction.

Placement

The removal of a child from his/her natural home, placing him/her in a different custodial setting for more than a short period of time. Placement may be in a foster home, group home, relative's home or institution.

These definitions are from the glossary in The Comprehensive Training Program for the CASA/GAL developed by the Minnesota Supreme Court Permanent Families Task Force. 1989.



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